

DOCKET FILE COPY ORIGINAL

RECEIVED

MAR 17 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

**800 Data Base Access Tariffs and the
800 Service Management System Tariff**

CC Docket No. 93-129

**OPPOSITION OF
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE
TO APPLICATION FOR REVIEW**

**AD HOC TELECOMMUNICATIONS
USERS COMMITTEE**

**James S. Blaszak
Francis E. Fletcher, Jr.
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900 - East Tower
Washington, D.C. 20005**

Its Attorneys

March 17, 1994

**No. of Copies rec'd
List ABCDE**

044

MAR 17 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
800 Data Base Access Tariffs and the)	CC Docket No. 93-129
)	
800 Service Management System Tariff)	

To: The Commission

**OPPOSITION OF
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE
TO APPLICATION FOR REVIEW**

The Ad Hoc Telecommunications Users Committee ("Ad Hoc Committee" or "Committee"), pursuant to Section 1.115(d) of the Commission's Rules, hereby opposes the Application for Review ("Application") filed March 2, 1994 on behalf of Ameritech Services, The Bell Atlantic Telephone Companies, Pacific Bell, The NYNEX Telephone Companies, and U S WEST Communications, Inc. (collectively, "Petitioners") requesting the Commission to review and reverse the Common Carrier Bureau's Order released herein on January 31, 1994.^{1/}

The Order denied requests for waiver of provisions of the Bureau's July 19, 1993 Designation Order which required each LEC to disclose its computerized cost model on the record where the justification for its rates is based on the use of such a model or, alternatively, where a LEC prefers not to disclose its

^{1/} In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, Order, DA 94-99, rel. Jan. 31, 1994 ("Order").

computer model, to allow it to develop its costs by other methods, provided those methods are disclosed to the public on the record.^{2/} Petitioners' claims that these requirements are contrary to the disclosure procedures established by the Commission in the ONA tariff investigation are specious. The Bureau properly distinguished, both in the Order and in the Designation Order, the circumstances presented in the ONA tariff investigation from those presented in its investigation of the 800 data base access tariffs. Petitioners' efforts to avoid scrutiny of the cost data underlying their 800 data base access tariffs should be rejected and their Application denied.^{3/}

^{2/} 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation, CC Docket No. 93-129, 8 FCC Rcd 5132 (1993) ("Designation Order"), at 5135-36.

^{3/} Somewhat curiously, Petitioners focus their attention on vertical feature services stating, for example, that "Petitioners were directed in the Order to file cost support for their 800 data base vertical feature services . . ." and that their Application "deals only with 800 data base 'vertical features,' the only part of 800 data base service for which new service cost justification was required." Application, at p. 1 and p. 2, n. 6. In fact, of course, the Designation Order imposes the complained of disclosure requirements not only on vertical features, but on the more important basic query service to the extent exogenous cost treatment is sought in connection with such service. The Ad Hoc Committee welcomes Petitioners' apparent concession that the Bureau's disclosure requirements with respect to basic query service are proper, but is concerned that Petitioners seek to play upon the Commission's recognition that CCSCIS may be the only way to obtain a fully accurate measure of vertical feature costs as a means to block review of cost models underlying the more important basic query service.

I. THE DISCLOSURE PROCEDURES ADOPTED IN THE COMMISSION'S ONA PROCEEDING DID NOT ESTABLISH BROAD CARRIER RIGHTS TO FILE PROSPECTIVE COST STUDIES UNDER A RESTRICTED PUBLIC ACCESS POLICY, AND WERE PROPERLY DISTINGUISHED IN THE BUREAU'S TREATMENT OF THE 800 DATA BASE TARIFFS

A. Application Of The ONA Disclosure Procedures Was Restricted To The Facts Presented In That Proceeding

The limited public access in camera-type procedure followed by the Commission in the ONA tariff investigation represented an extraordinary one-time departure from traditional FCC requirements for full public disclosure, examination and review of cost support materials. For Petitioners to argue that the ONA tariff investigation "established procedures to be followed when a carrier developed a tariff rate for a new service based on forward-looking costs",^{4/} and to assert blandly that "Petitioners quite naturally proposed to follow the identical path ultimately approved in the ONA proceeding for use of such models"^{5/} verges on the ludicrous. There is simply no support for Petitioners' startling contention, made without benefit of citation or other cognizable reference, that the Commission intended its ONA disclosure procedures to govern all future tariff proceedings involving new services.^{6/}

^{4/} Application, p. 3.

^{5/} Id. at p. 6.

^{6/} In a similar vein, Petitioners state that "the Commission's directives in this area also provided a measure of stability for future tariff filings." Application, p. 5. The implication that the Commission stated or suggested any such intention is untrue.

To the contrary, and as noted in the Order,^{1/} while affirming the disclosure procedures used in the ONA proceeding the Commission expressly stated that "it did not expect the unusual procedures adopted for review in the ONA tariffs to be employed in the future without substantial justification."^{2/} And, in a concurrently released decision, the Commission reiterated that the disclosure procedures in the ONA proceeding were "unusual" and stated that carriers will "bear a substantial, initial burden of demonstrating the circumstances that preclude reliance on publicly available data."^{2/} Certainly that burden is not met merely by noting what the Commission did in the ONA proceeding. Petitioners fail completely to address, much less demonstrate, why they cannot rely on publicly available data to support their 800 data base access tariffs.

B. The Bureau Properly Distinguished The ONA Disclosure Procedures From The Circumstances Presented By The 800 Data Base Access Tariffs

The fundamental distinction between the circumstances presented in the ONA tariff review proceeding and this tariff review proceeding, made clear in both the Designation Order and the Order, is that here disclosure of proprietary cost models is

^{1/} Order, ¶ 4.

^{2/} Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs, FCC 93-531, at n. 17 (December 15, 1993) ("Review of SCIS Disclosure Order").

^{2/} Open Network Architecture Tariffs of Bell Operating Companies, Order, CC Docket No. 92-91, FCC 93-531, at n. 163 (December 15, 1993) ("Final ONA Order").

unnecessary because, unlike the ONA proceeding, an alternative exists. Rather than disclose their cost models, carriers may elect to use alternative approaches such as those used by two LECs (U S WEST and GTE). As stated in the Designation Order:

Since, in the present proceeding, two LECs were able to develop costs for 800 data base service without computer models, LECs do not need to rely exclusively on such a model for this service. Therefore, neither the carriers nor the Commission is faced with the limitation on cost development that prompted reliance on the SCIS model in the ONA tariff investigation.^{10/}

And, in the Order:

The Commission has not yet decided whether to grant exogenous cost treatment for some or all of the claimed costs, but we find that they can be allocated by other means, such as the relative weighted volume of queries for each of the services. Therefore, if contractual obligations to third party vendors prevent the LECs from disclosing their cost models on the record, they should use another method of developing cost support that can be disclosed on the record. The LECs believe that such methods are not sufficiently precise. We would encourage them to be as precise as possible but, if the choice comes down to one between precision and public disclosure, we opt for public disclosure. This should eliminate the need to rely on the equipment vendors' confidential and proprietary information and, therefore, eliminate their concerns.^{11/}

Moreover, the Bureau drew additional distinctions, again both in the Order and in the Designation Order, between the disclosure treatment afforded in the ONA tariff investigation and the circumstances presented by the 800 data base access tariffs:

- In the ONA proceeding, the LECs had to calculate investment required to produce many dissimilar services that could be provided through the same switch, and it was critical that the FCC calculate costs for BSEs as accurately as possible; in 800 database, shared CCS

^{10/} Designation Order, ¶ 29, n. 24.

^{11/} Order, ¶ 12.

facilities are used for only a few services of a similar nature, and they typically involve queries to a database where the relative costs can be allocated by some means other than a CCSCIS model.^{12/}

- "Moreover, given the particular services and facilities at issue in the ONA investigation, the data used to develop and exercise the SCIS model included information proprietary to entities other than the filing carriers. Therefore, some confidential treatment of the SCIS model was justified. Those services, and the facilities used to deliver those services, are not at issue here."^{13/}

The Bureau also addressed arguments raised by Petitioners in their replies to oppositions to the waiver requests that the reason that some LECs did not need cost models was because they used only dedicated facilities to provide service, whereas others used shared facilities, such as SCPs and links, to provide basic 800 data base query service and therefore needed to use CCSCIS to develop exogenous costs for that service. As the Bureau pointed out, the BOCs themselves acknowledged that even some LECs that have claimed exogenous treatment for shared facilities have developed ancillary means for identifying costs specific to 800 database, and did not need to use cost models to determine the investment needed to provide the 800 database basic query service.^{14/}

^{12/} Order, ¶ 14.

^{13/} Designation Order, ¶ 29, n. 24.

^{14/} Order, ¶ 7.

C. Petitioners' Transparent Mischaracterizations Of The Bureau's Decisions Should Be Rejected

The Bureau recognized that vertical feature investment would be better calculated using a cost model, but decided it would accept other means for identifying such costs if it meant permitting scrutiny of cost data underlying the more important basic query service. Unable to find fault with the Bureau's reasoning that precise accuracy of vertical feature costs was less important than the opportunity for the public to review and comment on the cost data underlying the basic query service, Petitioners resort to mischaracterizing the Order. Thus, Petitioners contend that the Bureau "argues that the less important the tariff filing the more willing the Commission is to risk either inaccurate cost support or disclosure of secret information in the name of vital public review," and that it is the "stated position" of the Bureau "that the cost accuracy and protection of confidential information somehow coexist on a sliding scale with public review of tariff support depending on the importance of the tariff."^{15/}

Contrary to Petitioners' contentions, the Bureau did not impute either more or less importance to the 800 data base access tariffs than to the ONA tariffs. Rather, it determined correctly that the relatively incidental importance of vertical features to the basic query service led it to the conclusion "that the public interest would suffer more by failing to make

^{15/} Application, p. 8.


public disclosure of the cost support for both basic 800 database services and vertical features than it would gain by having a more precise calculation of costs for vertical features."^{16/}

II. CONCLUSION

The Commission should affirm the Bureau's disposition of Petitioners' requests for waiver of the 800 database tariff cost support requirements established in the Designation Order, and deny the Application for Review.

Respectfully submitted,

**AD HOC TELECOMMUNICATIONS
USERS COMMITTEE**

By: 
James S. Blaszak
Francis E. Fletcher, Jr.
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900 - East Tower
Washington, D.C. 20005
(202) 408-7100

March 17, 1994

^{16/} Order, ¶ 14.

CERTIFICATE OF SERVICE

I, Sonia J. Arriola, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 17th day of March, 1994, mailed, via first-class mail, postage prepaid, a copy of the foregoing **OPPOSITION OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE TO APPLICATION FOR REVIEW** to the following:

- * Mr. William A. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

- * ITS
1919 M Street, N.W., Suite 246
Washington, D.C. 20554

- * Kathleen B. Levitz, Acting Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

- * Gregory J. Vogt
Chief, Tariff Division
Federal Communications Commission
1919 M Street, N.W., Room 519
Washington, D.C. 20554

- * Ms. Judith A. Nitsche
Chief, Tariff Review Branch
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Thomas E. Grace
Room 4H70
200 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

AMERITECH SERVICES

Lawrence W. Katz
1710 H Street, N.W.
Washington, D.C. 20006

THE BELL ATLANTIC TELEPHONE COMPANIES

James P. Tuthill
Nancy C. Woolf
Room 1523
140 New Montgomery Street
San Francisco, CA 94105

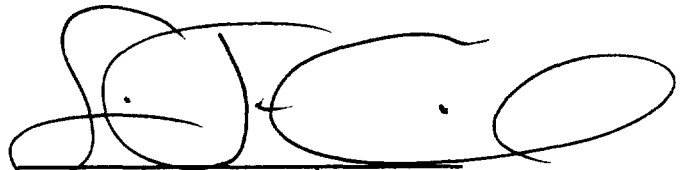
PACIFIC BELL

William J. Balcerski
Room 427
120 Bloomingdale Road
White Plains, New York 10605

THE NYNEX TELEPHONE COMPANIES

Robert B. McKenna
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

U.S. WEST COMMUNICATIONS, INC.



Sonia J. Arriola

* By Hand Delivery